



U.S. Citizenship
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JUN 09 2008
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FILE:

Office: LOS ANGELES, CALIFORNIA

Date:

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Taiwan who was found to be inadmissible to the United States pursuant to 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the beneficiary of an approved Petition for Alien Relative as the spouse of a U.S. citizen. He now seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States and reside with his U.S. citizen spouse and Lawful Permanent Resident (LPR) parents.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualified relative. The application was denied accordingly. *See District Director's Decision* dated December 16, 2003.

Section 212(a)(2) of the Act states in pertinent part, that:

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

. . . .

Section 212(h) of the Act provides, in pertinent part, that:

(h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

. . . .

- (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

The record reflects that on March 15, 2000, in the Superior Court Northern Branch of the State of California and for the County of San Mateo the applicant was convicted of a violation of section 487(A) of the Penal Code, grand theft. On September 6, 2002, in the 3rd District Court, Salt Lake County, State of Utah the applicant was convicted of attempted falsely make/code/sign financial transactions and was sentenced to 360 days imprisonment. The applicant is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, due to his conviction of a crime involving moral turpitude (grand theft).

Section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In the present case, the applicant must demonstrate extreme hardship to his U.S. citizen spouse or LPR parents.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, counsel states that the Immigration and Naturalization Service (now known as Citizen and Immigration Services, (CIS)) failed to consider the affidavits submitted by the applicant's parents. In his brief counsel states that both of the applicant's parents are ill and the applicant's presence is needed in order to take care of them. Documents submitted show that the applicant's mother underwent a tumor removal from her brain in 1991 and in 1992 she had a mastectomy. In her affidavit she states that the applicant takes care of her during the day since she cannot stand for a long period of time and she experiences headaches and pain in her neck. The applicant's father states that in March of 2000 he underwent treatment in Taiwan due to hypertensive cardio-vascular disease and chronic obstructive pulmonary disease. Both parents state that they have three other children residing in the United States but they state they are unable to take care of them due to their own family and employment commitments. No documentary evidence was provided to substantiate that the applicant's parents cannot take care of themselves and their daily chores. There is no independent corroboration to show that the current medical condition of the applicant's parents would be jeopardized if the waiver application is denied and he is not permitted to remain in the United States.

In an affidavit submitted by the applicant's spouse (Ms. [REDACTED]) she states that the applicant is the only person that believes, encourages, and stands by her. Furthermore Ms. [REDACTED] states that she does not want to leave the United States and relocate to Taiwan with the applicant because it will be difficult for her to find a job especially in her field of digital filming.

There are no laws that require Ms. [REDACTED] to leave the United States and live abroad. In *Silverman v. Rogers*, 437 F. 2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States." The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represent the type of inconvenience and hardship experienced by the families of most aliens being deported. See *Shoostary v. INS*, 39 F. 3d 1049 (9th Cir. 1994).

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation

from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse or LPR parents would suffer extreme hardship if he was not permitted to remain in the United States at this time. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.